taxation, though expressed in the same phrasing, could still stand.[11] While the four justices assign no reason for their dissent, it is fair, therefore, to assume that they could find no contract in fact.

THE EXTENT OF THE PROTECTION AFFORDED THE DOWER RIGHT. — It has just been decided in Utah, apparently for the first time anywhere,[1] that a widow whose husband has conveyed away land without her consent cannot recover from his estate after his death the value of her dower in the land thus disposed of. *In re Park's Estate*, 87 Pac. Rep. 900. The case may be explained on the ground that she suffered no damage. But the reasoning on which the court proceeded — that dower rights are only against the land — suggests the question whether they are always so limited.

Dower was early considered a mere inchoate right, not so high as an interest in land.[2] But more recently many incidents of property have been given to it,[3] and now the decidedly prevalent view is that "it is a subsisting and valuable interest which will be protected and preserved."[4] The difficulty whether the interest will be extended beyond the land itself arises especially in two classes of cases: when a mortgage on the land is foreclosed, and when the land is put to a public use. As to the wife's rights when her interest in the land is destroyed by the foreclosure of a prenuptial mortgage, or of one in which she joined, a serious conflict exists. The widow's right to dower in an equity of redemption is now almost universally recognized,[5] though formerly it was otherwise.[6] But when the foreclosure takes place during the husband's life, at least three results have judicial sanction. Some courts give the wife no rights in the proceeds of the sale. It is argued that her joining in the mortgage interrupts, with her consent, the seisin of her husband, and without this seisin dower cannot exist;[7] also, that dower, being but an interest in the husband's title, is destroyed when that is defeated by the mortgagee's paramount title and turned into personalty.[8] These grounds[9] are rather technical, and so other courts, proceeding more on equitable considerations, give the wife a right in the surplus. They justly say that she had an interest in the equity of redemption, and when this is changed into money, her interest should attach

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[11] Mayor of Hagerstown *v.* Dechert, 32 Md. 369.

[1] See Miller *v.* Farmer's Bank, 49 S. C. 427, 436 (*semble*, that if a husband alone executes a mortgage, which is foreclosed after his death, the widow's rights are only against the land).

[2] See Moore *v.* Mayor of New York, 8 N. Y. 110.

[3] Simar *v.* Canady, 53 N. Y. 298 (the wife has an action against one who fraudulently induced her husband and herself to convey); Porter *v.* Noyes, 2 Me. 22 (the existence of the right defeats a covenant to give an unincumbered title); Buzick *v.* Buzick, 44 Ia. 259 (the wife can bring a bill to protect it from fraud). See, also, Clifford *v.* Kampfe, 147 N. Y. 383; Sykes *v.* Chadwick, 18 Wall. (U. S.) 141.

[4] Simar *v.* Canady, *supra*, 304. *Contra*, Virgin *v.* Virgin, 189 Ill. 144, 151.

[5] Snow *v.* Stevens, 15 Mass. 278. *Contra*, *In re* Thompson's Estate, 6 Mackey (D. C.) 536.

[6] 4 Kent, Com., 43, 44.

[7] Grube *v.* Lilienthal, 51 S. C. 442.

[8] Newhall *v.* Lynn Savings Bank, 101 Mass. 428.

[9] For weaker grounds, see George *v.* Hess, 48 W. Va. 534; Kauffman *v.* Peacock, 115 Ill. 212.

to the proceeds on principles analogous to equitable conversion.[10] This interest is usually protected by ordering a third of the surplus to be invested.[11] At least one court takes the third view that the wife mortgages her interest merely as surety for her husband, and protects her interest in the entire proceeds accordingly.[12] The first two views have almost equal support, but the last is generally discredited.[13] It should be remembered that a distinction might well be made between a mortgage which gives only a lien and one which passes title.

In the second class of cases mentioned, if a husband dedicates his land to the public, and it is accepted, the dower is destroyed.[14] To make it of any value to the widow would seriously inconvenience the public, and "the public [right] shall be preferred before the private."[15] Similarly, when a husband grants to a railroad for public use, the dower is gone.[16] When the state, or a railroad, takes land by eminent domain, it holds free from dower, though the wife was not a party to the proceedings. An early case states the ground to be that all the interest is in the husband.[17] But as the wife is now deemed to have a valuable interest, a better explanation is that this interest, not arising to an estate, is represented in the fee of the husband for purposes of condemnation and compensation.[18] It is well settled, however, that the wife's interest will be transferred from the land to the money given for it, and will be secured therein.[18] When the husband dedicates his land to the public, whether his wife would have against him any action, legal or equitable, is a question which seems not yet to have arisen. It is believed that he thus destroys a subsisting right of hers, for which she should have compensation.

UNCONSTITUTIONALITY OF THE AMENDMENT TO THE NEW YORK STOCK TRANSFER TAX. — On the ground of being in conflict with the constitutional provision for equal protection of the laws, New York has recently declared invalid an act imposing a stamp tax of two cents a share on the transfer of stock. *People ex rel. Farrington* v. *Mensching*, 187 N. Y. 8. This was a privilege tax, and to such a tax the requirement for equal protection of the laws applies.[1] Just as with a property tax one individual should not be assessed on his goods more, without a reason, than another individual of the same class on goods of equal value, so it is an unequal burden for the state to charge one person more for the same privilege than it charges another. The fault found with the statute in question is obviously of this sort. The privilege of transferring a hundred shares, worth a dollar a share, is no more valuable than the privilege of transferring one share worth a hundred dollars; yet the tax imposed in one case was two dollars and in

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10 Denton *v.* Nanny, 8 Barb. (N. Y.) 618.

11 Vreeland *v.* Jacobus, 19 N. J. Eq. 231. But *cf.* Matter of Brooklyn Bridge, 75 Hun (N. Y.) 558.

12 Mandel *v.* McClave, 46 Oh. St. 407.

13 Burnet *v.* Burnet, 46 N. J. Eq. 144.

14 Duncan *v.* Terre Haute, 85 Ind. 104.

15 Co. Lit. 31 *b*.

16 Venable *v.* Wabash, etc., R. R. Co., 112 Mo. 103.

17 Moore *v.* Mayor of New York, *supra*.

18 Wheeler *v.* Kirtland, 27 N. J. Eq. 534. *Cf.* Canty *v.* Latterner, 31 Minn. 239.

1 State *v.* Ferris, 53 Oh. St. 314, 337; Magoun *v.* Illinois, etc., Bank, 170 U. S. 283, 300.